FINANCE

COVID-19: Payment Breaks – Central Bank Confirms Supervisory Expectations

12 June 2020

The Central Bank of Ireland has clarified its supervisory expectations of the regulated firms that granted payment breaks to personal and business customers impacted by the COVID-19 pandemic. Active engagement with borrowers, transparent communication, and the timely identification of appropriate and sustainable solutions for borrowers who remain in financial difficulties are the key focus areas.

On 8 June 2020, the Central Bank of Ireland (**CBI**) sent a 'Dear CEO' letter to the CEOs of the regulated firms that granted payment breaks of up to six months to personal and business customers impacted by the COVID-19 pandemic. Those non-legislative payment breaks were granted by the five retail banks (AIB, Bank of Ireland, KBC, permanent tsb and Ulster Bank) and eight other regulated non-bank lenders and credit servicers.

Further information on those payment breaks is set out in our previous briefings: COVID-19: Supports announced for affected customers of banks and other lenders (20 March 2020) and COVID-19: Payment breaks extended to six months (7 May 2020).

As of 28 May 2020, more than 140,000 COVID-19 payment breaks had been granted, including 78,000 mortgage payment breaks and 35,800 payment breaks on loans to SMEs.[1]

The 'Dear CEO' letter sets out what the CBI expects of those firms when dealing with borrowers in relation to COVID-19 payment breaks. It also set out the minimum information that the CBI expects to see in communications from those firms to borrowers in respect of COVID-19 payment breaks.

CBI SUPERVISORY EXPECTATIONS **Applicable to regulated firms that granted payment breaks**	
Borrowers' best interests	Protect borrowers' best interests in line with the CBI's codes of conduct and other regulatory requirements.
Support borrowers	Support borrowers whose incomes and ability to service debt have been affected by the COVID-19 pandemic.
Payment breaks should be generally available	Make payment breaks generally available to borrowers impacted by the COVID-19 pandemic, whether or not they were already in financial difficulties.
Partial repayments should be allowed during breaks	Allow borrowers who have availed of a payment break to make partial repayments during the break period if they wish to do so.
Firms should be ready to engage	Be ready to engage with borrowers, identify if borrowers may need further support, and identify solutions that might be appropriate and sustainable. Be aware that further support may trigger a forbearance classification and may need to be noted on the borrower's record with the Central Credit Register.
Provide clear information	Give borrowers clear information about what will happen at the end of the payment break and what options are available to them. As previously signalled by the CBI, a term extension should be one of those options.

1 Banking & Payments Federation (Ireland): Banks undertaking significant engagement with 140,000 customers currently on payment breaks (28 May 2020)

CBI SUPERVISORY EXPECTATIONS **Applicable to regulated firms that granted payment breaks**	
Classification	Inform borrowers how their loans will be classified if they continue to experience financial difficulties once their payment breaks expire.
Assessment plan	Put a plan in place to assess all borrowers to whom payment breaks have been granted with a view to identifying appropriate and sustainable solutions for those who continue to experience financial difficulties after the end of a payment break.
Prioritise certain borrowers	Prioritise borrowers at higher risk of financial difficulties for engagement and assessment.
Reports	Keep detailed reports on the take-up levels for payment breaks.

The CBI noted that regulated firms could exceed the above supervisory expectations when dealing with borrowers impacted by the COVID-19 pandemic.

COMMUNICATIONS **Communications with borrowers regarding payment breaks must:**	
• be **clear** and **transparent**	• **only** deal with COVID-19 payment breaks
• only include **warnings** that are appropriate and required	• give the borrower a **cooling-off period**
• confirm the **start-date** and **end-date** of the payment break	• explain any changes to terms and conditions in **plain English**
• confirm that **no repayments** are expected during the payment break (or confirm any repayments that the borrower has agreed to make during the payment break)	• confirm that the borrower can make **partial repayments** during the payment break if desired (and any impact of doing so)
• confirm the impact of the payment break where the borrower receives **tax relief at source**	• advise the borrower to consider the impact of the payment break on **insurance policies**
• confirm that the borrower's account will **not be treated as in arrears** as a result of the payment break	• clarify the impact of the payment break on any **legal proceedings**
• confirm whether/how the payment break could affect the borrower's **credit record**[2]	• confirm how **interest** will be treated during and after the payment break
• confirm what the **repayment** amounts and **cost of credit** will be **after the payment break ends**	• confirm that the firm will be in touch with the borrower to **discuss next steps** and what those next steps might be

WHAT MUST REGULATED FIRMS DO NOW?

The CBI has asked regulated firms to provide it with the following:

Within two weeks of the 'Dear CEO' letter:

Confirmation that the firm adheres to the supervisory expectations outlined in the letter.

Within four weeks of the 'Dear CEO' letter:

- Strategic Plan

  This must be approved by the firm's board. It must set out the firm's plan for carrying out an assessment of all borrowers who have availed of payment breaks to ensure that the firm identifies appropriate and sustainable solutions for those who continue to experience financial difficulties after the payment breaks end.

  Key challenges and risks to implementing the plan must be identified, and the plan must include key milestones to the end of 2021.

- Operational Plan

  This must also be approved by the firm's board, and must support the above strategic plan.

  It must contain granular detail on customer contact plans, the management of borrowers who will continue to experience financial difficulties, proposed restructuring decision trees, the proposed approach to rolling-over payment breaks, the risk-based approach that will be taken to assessing those borrowers who are likely to continue to experience financial difficulties, the post-payment break customer relationship, how the operational plan will be resourced, and what the full financial impact of the payment breaks on the firm's profitability and capital adequacy will be.

The CBI also expects firms to make a prudent assessment of the distress levels in their loan portfolios and reflect this in their provisioning levels (even though provisions may not yet have been taken at individual borrower level).

2 The CBI had already confirmed that a six-month payment break would not be specifically identified on a borrower's credit report with the Central Credit Register. However, certain lenders may supply credit data to other, private, credit bureaux.

BANKS AND THE EBA GUIDELINES

As set out in our recent briefing, COVID-19: EBA Guidelines on Payment Moratoria, the European Banking Authority (**EBA**) published Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis on 2 April 2020 (the **EBA Guidelines**).

The EBA Guidelines clarify that when a COVID-19 moratorium scheme (such as the non-legislative payment breaks granted by the five Irish retail banks) meets the criteria necessary to be deemed to be a "*general payment moratorium*" for the purposes of the EBA Guidelines, the granting of a moratorium under that scheme to a borrower will not, of itself:

- trigger a forbearance classification for the relevant loan; or
- be treated as a distressed restructuring of that loan.

In the 'Dear CEO' letter, the CBI reminded the five retail banks that **all** conditions set out in the EBA Guidelines for a moratorium to be classified as a "*general payment moratorium*" must be met for that classification to be available. The CBI is concerned that some payment breaks proposed by the banks for larger borrowers (SME/corporate/commercial borrowers) may not meet all of those conditions.

COMMENT

It is clear that, notwithstanding the non-legislative nature of the Irish payment breaks, the CBI is very focused on how regulated firms deal with customers during and after their payment breaks. In-scope regulated firms should focus on ensuring compliance with the supervisory expectations set out in the 'Dear CEO' letter, together with other applicable regulatory requirements. Clear and transparent communication with borrowers will be key, as will keeping detailed records of dealings with borrowers who have availed of payment breaks to demonstrate compliance with the CBI's supervisory expectations and other regulatory requirements. However, it is also clear that when the general moratorium period is over, those firms will also have to apply themselves to the impact of the COVID-19 pandemic on their provisioning and capital positions.

KEY CONTACTS

Glenn Butt
Partner
+353 1 920 1197
glenn.butt@arthurcox.com

Darragh Geraghty
Partner
+353 1 920 1045
darragh.geraghty@arthurcox.com

Orla O'Connor
Partner
+353 1 920 1181
orla.oconnor@arthurcox.com

Brendan Wallace
Partner
+353 1 920 1069
brendan.wallace@arthurcox.com

Robert Cain
Partner
+353 1 920 1050
robert.cain@arthurcox.com

Gráinne Hennessy
Partner
+353 1 920 1202
grainne.hennessy@arthurcox.com

Niamh Quinn
Partner
+353 1 920 1189
niamh.quinn@arthurcox.com

Maedhbh Clancy
Of Counsel
+353 1 920 1225
maedhbh.clancy@arthurcox.com

Phil Cody
Partner
+1 212 782 3290
phil.cody@arthurcox.com

Cormac Kissane
Partner
+353 1 920 1186
cormac.kissane@arthurcox.com

Ultan Shannon
Partner
+353 1 920 1188
ultan.shannon@arthurcox.com

Declan McBride
Of Counsel
+353 1 920 1065
declan.mcbride@arthurcox.com

Matt Dunn
Partner
+353 1 920 2020
matt.dunn@arthurcox.com

Kevin Lynch
Partner
+353 1 920 1199
kevin.lynch@arthurcox.com

Imelda Shiels
Partner
+353 1 920 1070
imelda.shiels@arthurcox.com

Sinéad Cantillon
Professional Support Lawyer
+353 1 920 1083
sinead.cantillon@arthurcox.com

Kathleen Garrett
Partner
+44 207 832 0205
kathleen.garrett@arthurcox.com

David Molloy
Partner
+44 207 832 0207
david.molloy@arthurcox.com

Aiden Small
Partner
+353 1 920 1072
aiden.small@arthurcox.com